IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No.338 of 2003

Date of Decision: 3.1.2006

National Insurance Company …Appellant.

Versus.

Smt. Gomti Dvi and anr. .. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Mr Ashwani Sharma, Advocate.**

For the Respondent(s): **Mr. Virender Thakur, Advocate, for Rekspondent No.1.**

Deepak Gupta, J. (Oral).

This is an appeal under the Workmen's Compensation Act. When the appeal was admitted, no substantial question of law was framed. However, along with the grounds of appeal, the appellant has framed the following substantial questions of law:-

1. Whether the order awarding compensation to the claimant under the Workmen's Compensation Act over and above the provisions of Section4, 4(a) and Schedule IV of the Act, is justified?
2. Whether the liability for payment of penalty can be fixed upon the Insurance Company?

As far as the first question is concerned, the only ground raised by Mr.Aswhani Sharma is that the salary of the deceased was only Rs. 2000/- per month.

In the claim petition, it was mentioned that the deceased was getting a salary of Rs. 3000/- per month and daily allowance of Rs.50/-per day. The owner in his reply stated that the total salary being paid to the deceased was Rs. 2000/- per month. When the claimant who is the mother of the deceased stepped into the witness box, she again stated that the salary was Rs. 3000/- per month plus daily allowance. A suggestion was put to her in cross-examination that the total emoluments of the deceased were only Rs. 2000/- per month. This was denied by her. The owner did not step into the witness box. The question as to what was the salary of the deceased is only a question of fact which the Commissioner has decided on the basis of evidence led before it. No question of law much less a substantial question of law is involved, hence this contention of the learned counsel is rejected.

The next contention of Mr.Sharma, is that penalty could not have been imposed on the Insurance Company. In this behalf, he is absolutely right. The apex Court in **Ved Prakash Garg versus Premi Devi and others** (1997) 8 SCC 1, has clearly held that the Insurance Company is not liable to pay the penalty. Even otherwise, I feel that once interest had been awarded under Section 4-A the

Commissioner should not have imposed the penalty especially without issuing any notice in this behalf.

In view of the above discussion, the appeal is partly allowed and the order in so far as it relates to imposition of 30% penalty is concerned, is set aside and rest of the order is upheld. No costs.

January 3, 2006. (Deepak Gupta),
s. Judge.